95 Cal. 524, 29 Am. St. Rep. 149, 30 Pac. 765, 766; *Ward* v. *Boyce,* 152 N. Y. 191, 36 L. R. A. 549, 551.

BANKRUPTCY—DEBTS ENTITLED TO PRIORITY—WORKMAN, CLERK, ETC.—Petitioner was employed by the bankrupt to deliver milk at the bankrupt's premises with his team at a fixed price per month. He now asks that the balance due him on this contract be allowed priority and be paid in full out of the bankrupt's estate under Sec. 64 b, cl. 4. *Held,* petitioner, being neither a "workman, clerk or servant" within the meaning of that section, and there being nothing in his contract or the facts before the court to individuate his services from those of his team, the amount due for his personal services cannot be separated, and no portion of the claim can be preferred. *Sprucks* v. *Lackawanna Dairy Co.* (D. C. M. D. Pa. 1911), 189 Fed. 287, 26 A. B. R. 554.

Decisions directly in point on this question are very few; and among the few remarks of the text writers and decisions there is wide conflict of opinion. LOVELAND, BANKRUPTCY, 777, says: "But where the claim arises under an entire contract for labor, including the services of a team, it can not be apportioned and is not entitled to priority," citing *In re Blackman,* 6 Chi. L. News. 18, where it was held that a claim for services rendered by claimant and his team was not entitled to priority as a debt due to an "operative, clerk or servant" under § 27 of the act of 1867. And it has been said *obiter* that a general expressman who owns his horse and wagon, and receives pay by the piece has never been claimed to be a servant within the meaning of this section. *In re Smith,* 11 A. B. R. 646; thus supporting the principal case. While on the other hand a broad construction of both "wages," *In re Fink,* 163 Fed. 135; *U. S.* v. *Bernays,* 158 Fed. 792, "servants," *In re Caldwell,* 164 Fed. 515, and the character of the service, *In re New England Thread Co.,* 154 Fed. 742, is contended for. COLLIER, BANKRUPTCY, Ed. 7, p. 740; REMINGTON, BANKRUPTCY, §§ 2166-2169. And it has been held that a man owning a team, plow, etc., working when and where he could obtain work, was a wage-earner, within the meaning of the 4th §, cl. b., *In re Yoder,* 127 Fed. 894, which though not controlling in construing this section, "may throw some light upon the question," *In re Scanlan,* 97 Fed. 26, and in *Matter of Winton Lumber and Mfg. Co.,* 17 Am. B. R. 117, it was expressly held that a teamster working with a team at an agreed price per day, came within the meaning of this section, and as proof was made before the referee as to the value of the respective services of teamster and of team, the reasonable worth of the teamster's services actually performed by him was separated from the agreed wage for both teamster and team, and that part of his claim was held to be entitled to priority by virtue of this section.

BANKRUPTCY—TITLE OF TRUSTEE UNDER UNRECORDED CONDITIONAL SALE—EFFECT OF AMENDMENT OF 1910.—The petitioner having delivered possession of certain goods to the bankrupt prior to the filing of the petition, on a contract for their conditional sale, which had not been recorded in compliance with a State statute, sought to reclaim the goods from the trustee after the vendee had been adjudicated bankrupt. *Held,* (1) that although the vendor's

retention of title under the unrecorded conditional sale contract was good as against the bankrupt himself or against his general creditors, it was not good against a lien or judgment creditor; (2) that Act of Congress, June 25, 1910, c. 412, § 836, Stat. 840, amending Bankruptcy Act 1898, c. 541, § 47, a (2), vested in the trustee the same right to attack unrecorded liens, where record is required by State law, as was given to judgment creditors and others under that law; (3) that the above section as so amended is not repugnant to § 64 b, cl. 5, of the Bankruptcy Act. *In re Calhoun Supply Co.* (D. C. N. D. Ala. E. D., 1911) 189 Fed. 537.

As to whether or not an adjudication in bankruptcy of itself operates as an attachment or lien, so as to give the trustee the rights and remedies of a judgment or lien creditor to property in the possession of the bankrupt, on an unrecorded contract for conditional sale, where the State law requires recording, has been an unsettled question. The status of the law prior to 1906 was discussed in 7 MICH. L. REV. 474; the weight of authority at that time being that an adjudication in bankruptcy itself operated as an attachment or seizure placing the trustee in the position of a lien creditor. This view of the law at that time was also upheld in LOVELAND, BANKRUPTCY, p. 450 and cases there cited; and in COLLIER, BANKRUPTCY, 7th Ed., p. 761 *et seq.*, and cases there cited. In 1906 the rule was authoritatively settled to the contrary by a decision of the Supreme Court of the United States holding that a trustee took no better title to the property of the bankrupt than did the bankrupt himself and his general creditors, and that an unrecorded conditional sale contract good as between the parties was good as to the trustee in favor of the unrecorded conditional vendor, *York Mfg. Co.* v. *Cassell,* 201 U. S. 344; *Thomas* v. *Taggart,* 209 U. S. 385, 389; this rule, of course, controlled such cases until the present act of Congress was passed. *Crucible Steel Co.* v. *Holt,* 174 Fed. 128. The act of Congress of June 29, 1910, c. 412, § 836, Stat. 840, amending the Bankruptcy Act of 1898, c. 541, § 47 a (2) reads: "And such trustee, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon;" and its obvious purpose is to re-establish the law as fixed by the weight of authority prior to the *York* case, placing the trustee, with respect to unrecorded conditional sale contracts, in the shoes of a lien or judgment creditor and not in the shoes of the bankrupt or a general creditor. It received its first construction in the case of *In re Lausman,* 183 Fed. 647, wherein the court held, basing its opinion on the doctrine of the York case, that inasmuch as an unrecorded mortgage was good between the parties in favor of the mortgagor, the title the trustee took was of not so much importance as was the distribution to be made of the property, and since this amendment in no way purported to repeal § 64, b, 5, the unrecorded mortgagor was entitled under that section, to priority in the payment of his claim. This decision ignoring the plain intent of the purpose of the amendment has not since been followed, and from the recent decisions it seems settled that the decision in the principal case has properly construed this amendment to "vest in the trustee, where record is required by State law, all the rights and remedies of a judgment

creditor or others under that law." Recent cases in accord with the principal case are: *In re Franklin Lumber Co.*, 187 Fed. 281, 26 A. B. R. 37; *In re Hammond*, 26 A. B. R. 336; *In re Bazemore*, 189 Fed. 236, 26 A. B. R. 494; *In re Hartdagen*, 189 Fed. 546.

BILLS AND NOTES—ACTIONS—REAL PARTY IN INTEREST.—A bill of exchange, which was accepted but not paid by D, was assigned to P after maturity, without consideration, and for the sole purpose of collection. P sued D on the bill, and D contended that P was not the real party in interest, and therefore could not bring suit. *Held*, that P is the real party in interest, under CODE CIV. PROC. § 449, so as to entitle him to bring the action. *Curtis* v. *Douglass* (1911), 130 N. Y. Supp. 1054.

The legal holder of a note, even though he have no beneficial interest therein, can sue thereon. *Fay* v. *Hunt*, 190 Mass. 378, 77 N. E. 502; *Dickinson* v. *Bull*, 72 Ill. App. 75; *Jump* v. *Leon*, 192 Mass. 511, 78 N. E. 532; *Edgerly* v. *Lawson*, 176 Mass. 551, 57 N. E. 1020; *Watkins* v. *Plummer*, 93 Mich. 215, 53 N. W. 165. Whether the code provision requiring an action to be brought in the name of the "real party in interest" has changed the rule of law so that a holder of a note, who has no beneficial interest therein, cannot maintain an action thereon, is a question on which the authorities do not seem to agree. It has been held in the following cases that the mere holder of a promissory note, who has no interest in it, cannot maintain an action upon it; such action can only be prosecuted in the name of the owner or the real party in interest. *Parker* v. *Totten*, 10 How. Pr. 233; *Clark* v. *Phillips*, 21 How. Pr. 87; *Swift* v. *Ellsworth*, 10 Ind. 205, 71 Am. Dec. 316; *Osborn* v. *McCleland*, 43 Ohio St. 284, 1 N. E. 644; *Killmore* v. *Culver*, 24 Barb. 656; *Bell* v. *Tilden*, 16 Hun. 346. A person to whom a note has been transferred for the purpose of collection is not the real party in interest so that he can maintain an action on it. *Independent Coal Co.* v. *First Nat. Bank*, 27 Ohio Cir. Ct. R. 297. *Contra*: *Abell Note Brokerage & Bond Co.* v. *Hurd*, 85 Iowa 559, 52 N. W. 488; *Linney* v. *Thompson*, 3 Kan. App. 718; *Eaton* v. *Alger*, 47 N. Y. 345; *Hunter* v. *Allen*, 106 App. Div. 557, 94 N. Y. Supp. 880; *Meyer* v. *Foster*, 147 Cal. 166, 81 Pac. 402; *Neal* v. *Gray*, 124 Ga. 510, 52 S. E. 622; *Lehman* v. *Press*, 106 Iowa 389, 76 N. W. 818; *Manley* v. *Park*, 68 Kan. 400. From the cases cited above it will be noticed that the decisions of New York on the question under discussion are not very consistent with each other. Since the code expressly requires that an action shall be brought in the name of the "real party in interest," and since the assignee of a negotiable note is not one of the excepted persons who can sue though not the party in interest (*Swift* v. *Ellsworth*, 10 Ind. 205), it seems to be more in accord with reason to hold that a holder of a note having no interest in it cannot maintain an action thereon.

CARRIERS—LIMITING LIABILITY FOR LOSS OF BAGGAGE—INTERSTATE COMMERCE.—The plaintiff, an interstate passenger of the defendant carrier, claimed damages in excess of two thousand dollars for loss of her baggage occurring through the negligence of the defendant. The defense was that the liability